IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 408 of 1999.

Date of decision: 23.3.2006.

State of H.P. ... Appellant

Versus

Suresh Kumar & Ors. … Respondents

Coram :

The Hon'ble Mr. Justice Deepak Gupta, Judge.

Whether approved for reporting?[1] No.

For the appellant: Mr. J.S. Guleria, Law Officer.

For the respondents: Mr. Ashok Sharma, Advocate.

Deepak Gupta, J. (Oral):

This appeal by the State is directed against the judgment of the Special Court (Court of Sessions), whereby the accused-respondents have been acquitted of the charges leveled against them under Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the Act).

The prosecution version is that the accused persons are Brahmin by caste, whereas complainant Mathru Ram belongs to the Scheduled Caste. They all belong to the same village. It is alleged that on 21.4.1995 when Mathru Ram wanted to take water from the village 'Bowri' Shyam Lal and Nand Lal accused instigated the other accused to stop Mathru Ram to take water from the 'Bowri'. Mathru Ram was prevented from taking water from the 'Bowri' only on the ground that he belongs to

[1]Whether reporters of Local Papers may be allowed to see the judgment? Yes.

the Scheduled Caste. Later Mathru Ram returned and forcibly took water from the 'Bowri'. Thereafter, the accused persons put cow dung in the 'Bowri' so as to defile the water. On 4.5.1995 Mathru Ram sent a complaint to the District Magistrate, Bilaspur. The police investigated the case and after completion of the investigation, the police first presented the challan in the Court of Additional Chief Judicial Magistrate, Ghumarwin. The Additional Chief Judicial Magistrate, Ghumarwin vide order dated 11.4.1996 came to the conclusion that the case was triable by the Special Court i.e. the Court of Sessions and that he had no jurisdiction to entertain the challan against the accused. He therefore, directed that the challan be returned for presentation before the competent Court.

Thereafter, the prosecution filed the challan in the Court of Sessions Judge, Bilaspur. The challan in the case was presented directly to the Sessions Court, which is specifically designated as 'Special Court' for the purpose of trial of such cases, under Section 14 of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989. As a mater of fact, the Special Court is only a Sessions Court and, therefore, it could not have taken the cognizance of the matter, unless the case was committed to it by the concerned Judicial Magistrate, in view of the bar contained in Section 193 of the Code of Criminal Procedure. There is no provision in the Scheduled Castes & Tribes (Prevention of Atrocities) Act, 1989 conferring the power upon the Special Court to take cognizance of the offences, specified in the Act, without the case being committed to it by the concerned Judicial Magistrate.

The Hon'ble Supreme Court in **Gangula Ashok and another Vs. State of A.P.** [(2000) 2 SCC 504] and **Vidyadharan Vs.**

State of Kerala, [(2004) 1 SCC 215] has held that a Sessions Court, specifically designated for the purpose of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, cannot take cognizance of an offence under the Act, unless the case is committed to it by the concerned Judicial Magistrate.

In view of the above stated position, it is held that the learned trial Court did not have the jurisdiction to take cognizance of the matter and to try it, unless the case was committed to it by the concerned Judicial Magistrate. Consequently the appeal is accepted. The impugned judgment of acquittal is set aside. The challan is ordered to be returned to the learned Special Public Prosecutor. The said Public Prosecutor, if so desires, may get the challan presented in the Court of the concerned Judicial Magistrate, who may then commit the case to the Special Court. The challan shall be returned to the Special Public Prosecutor by the trial Court, to which the record be returned immediately with a copy of this judgment.

(Deepak Gupta),
Judge

March 23, 2006
(BSS)